

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:MCT:CLE:TL-N-6585-00  
RSBloom

date: December 11, 2000

to: Manager, Technical Support Staff  
Cincinnati, OH  
Attn: Denise R. Cannon

from: Associate Area Counsel, LM:MCT  
Cleveland, OH

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subject: Advisory Opinion: Restricted Consent  
Taxpayer: [REDACTED]  
EIN: [REDACTED]  
Year: [REDACTED]

As requested, we have reviewed the proposed restricted consent language.<sup>1</sup> Since this advice involves a Coordinated Examination Program (CEP) taxpayer and we are suggesting an additional restricted paragraph to the proposed consent, this memorandum is being forwarded to our National Office for 10-day post review and, therefore, is subject to modification.

The consent to extend the time to assess tax is being restricted to the adjustment relating to the rehabilitation credit. The taxpayer has, to date, been unable to produce the certifications required under section 47(c)(2)(C). Therefore, you presently propose to adjust the credit by \$ [REDACTED]. Your proposed restricted consent language is as follows:

- (3) The amount of any deficiency assessment is to be limited to that resulting from any adjustment to rehabilitation credit; including any consequential changes to other items based on such adjustment.

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<sup>1</sup>Our review has been limited to the restricted language portion of the proposed Form 872. However, before sending the consent to the taxpayer, you should verify the taxpayer information contained on the form. The proposed form reflects the taxpayer's name as [REDACTED]. However, Form 5701 (Notice of Proposed Adjustment), which was forwarded to our office with the proposed consent, reflects the taxpayer's name as [REDACTED]. The name on the form should reflect that shown on the tax return in question.

We believe this language appropriately addresses the issue in question. However, the semicolon should be changed to a comma.

Additionally, we believe you should consider adding an additional restricted paragraph to the consent. In its present form, the assessment is limited, but any claim for credit or refund is not. Even though a consent to assess tax is restricted to a particular issue, the taxpayer's right under section 6511(c) to claim a credit or refund based upon such consent is not automatically so restricted. See Liberty Nat. Life Ins. Co. v. U.S., 77-1 U.S.T.C. ¶ 9107 (ND Ala. 1976), rev'd on other grounds, 600 F. 2d 1106 (5<sup>th</sup> Cir. 1979), cert. denied, 444 U.S. 1072 (1980). We believe the following additional paragraph would so limit the taxpayer's right to file a claim for credit or refund:

- (4) The provisions of section 6511(c), as set forth in paragraph (2), above, are limited to any refund or credit resulting from adjustments for which the period for assessment is extended under this agreement.

If you have any questions concerning this matter, please feel free to contact the undersigned at 216-522-3380.

Joseph F. Maselli  
Area Counsel, Area 2

By: \_\_\_\_\_  
Richard S. Bloom  
Associate Area Counsel